THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.25820 of 2005

10.3.2006

Between:

M/s. Vijay Agencies, Chittoor Road, Piler, Chittoor District.

… Petitioner

AND

District Collector, Chittoor

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.25820 of 2005

ORDER:

The petitioner is a partnership firm constituted with two partners for the purpose of establishment of retail petroleum outlet. The firm obtained a dealership from the third respondent for opening a petrol bunk. The two partners of the firm purchased Acs.0.50 of land in survey No.1969/1B abutting Chittoor road (NH-18) from V.Ram Mohana Reddy under registered sale deed dated 10.3.2005. As required under law, the petitioner firm through the Territory Manager of the third respondent approached the first respondent for issue of No Objection Certificate (NOC). By impugned letter dated 26.10.2005, the first respondent informed the Territory Manager of the third respondent that the grant of NOC to open retail outlet in survey No.1969/B of Doddipally village of Piler Mandal cannot be considered as, "the ownership of the proposed site is not clearly established as per Revenue records and that the retail outlet construction has been completed without obtaining No Objection Certificate from the District Authority". The petitioner contends that the land in survey No.1969/1B is not government land. It is patta land and pattadar passbook and title deeds were issued to Shaik Khadar Vali Saheb. The legal heirs of Vali Saheb sold

the land in favour of V.Ram Mohan Reddy, who in turn sold the land to the partners of the petitioner firm and, therefore, they contend that the impugned letter is arbitrary and illegal.

The matter came up before this Court for interlocutory orders in W.P.M.P. No.33202 of 2005. As the submissions for the purpose of interlocutory application and the main writ petition are the same, the learned Counsel for the petitioner and learned Assistant Government Pleader for Revenue (General) requested to finally dispose of the matter. Accordingly, the matter was heard finally.

The second respondent filed a counter affidavit opposing the writ petition. The relevant portion reads as under.

> At the outset, it is to be submitted that the 3rd respondent-company represented by its territory manager has submitted an application to the District authority for grant of No Objection Certificate to open petroleum retail outlet at S.No.1969/B of Doddipalle Village and the same was referred to the inspection officers i.e., Superintendent of Police, Chittoor, Sub-Collector, Madanapalle and Divisional Fire Officer, Kadapa in the reference Roc No.C4/3979/05 dated 1.6.2005. Pursuant to the instruction the Sub Collector, Madanapalle has personally inspected the land in Sy.No.1969/1B of Doddipalle Village along with Mandal Revenue Officer, Piler and Mandal Deputy Surveyor on 14.10.2005. After thorough verification of the connected records, the Sub-Collector, Madanapalle has reported on 18.10.05 that the land proposed for installation of petroleum retail outlet is an assigned land and the assignment was made in the year 1933 though the records are not available and as such, the petitioner could not establish ownership. The petitioner-firm claims to have purchased the petroleum outlet from its true owners. In fact as the lands in question are assigned lands, the petitioner-firm could not establish its ownership and that the land in question which resulted in rejection of the application for grant of 'No Objection Certificate' by the District Collector, Chittoor in his letter No.LDis No.3979/2005 dated 26.10.2005. Further the petitioner even before 'No Objection Certificate' is considered has constructed the petroleum retail outlet without any authority. The petitioner cannot compel the authority to issue no objection certificate especially when he failed to establish ownership over the land. The contention of the petitioner that no valid reasons were assigned by the 2nd respondent is not correct. At any cost as the land on which the petitioner contends to construct petroleum retail outlet belongs to the Government which was assigned to third party, the request of the petitioner cannot be considered favourably.

Learned Counsel for the petitioner submits that under the Petroleum Act, 1934 (the Act, for brevity) and the Petroleum Rules, 1976 (the Rules, for brevity), for storing petroleum a person requires licence from Chief Controller or the Controller of Explosives. When an application is submitted to the Chief Controller, the person has to apply to the District Authority i.e., the District Magistrate or the Commissioner of Police (in town having Commissionerate) for NOC. When such application is submitted for NOC, the District Authority cannot refuse the grant of NOC unless the applicant is given reasonable opportunity of being heard. He, therefore, submits that no notice was issued before issuing impugned letter and, therefore, it is

unsustainable. Secondly, placing reliance on the certificate of encumbrance dated 25.7.2005 issued by the Registration Department, he submits that since 1944 the land is recorded as patta land and without there being any record, the first respondent rejected the NOC on the ground that it is a government land as alleged in the counter affidavit. It is urged that the first respondent passed the said order without application of mind and without verifying the records.

Learned Assistant Government Pleader relies on the counter averments and submits that the District Collector referred the application of the petitioner/Territory Manager to the inspecting officers i.e., Superintendent of Police, Chittoor, Sub-Collector, Madanapalle and Divisional Fire Officer, Kadapa, that the Sub-Collector, Madanapalle inspected the land along with the Mandal Revenue Officer, Piler and submitted a report on 18.10.2005 to the effect that the land for proposed installation of petroleum retail outlet is an assigned land, which was assigned in the year 1933. Therefore, NOC was refused.

Before considering the point urged in the writ petition, it is necessary to refer to the Rules. 'Chief Controller' is defined as Chief Controller of Explosives, Deputy Chief Controller of Explosives, Joint Controller of Explosives and Deputy Controller of Explosives. The District Authority means the District Magistrate includes Additional District Magistrate. Chapter-VII of the Rules deals with grant of licences. Rules 141, 144 and 150 are relevant and they read as under.

> **141. Grant of licence**.- Licences under these rules may be granted by the licensing authorities set forth in the First Schedule specified for the purpose and on payment of a fee specified therein.
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> **144. No objection certificate**.- (1) Where the licensing authority is the Chief Controller or the Controller of Explosives as the case may be, an applicant for a new licence other than a licence in Form III, IX, XV or XVI shall apply to the District Authority with two copies of the site plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form VIII.
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> (2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.
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> (3) The Chief Controller or the Controller of Explosives as the case may be may refer an application not accompanied by a certificate granted under sub-rule (1) to the District authority for his observations.
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> (4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller of Explosives, as the case may be, that any licence which has been applied for should not, in his opinion, be granted such licence shall not be issued without the sanction of the Central Government.
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> **150. Refusal of No Objection Certificate**.- A District Authority refusing to grant a 'no objection certificate' under rule 144 shall record, in writing, the reasons for such refusal and shall furnish to the applicant a copy of such

order.

Provided that before refusing to grant a 'no objection certificate', the applicant shall be given a reasonable opportunity of being heard.

A reading of Rule 144 would show that District Authority is required to examine an application for NOC with reference to suitability of the site proposed and when the District Authority finds that the site proposed for establishment of petroleum outlet is not suitable, the applicant shall have to be given a reasonable opportunity of being heard (see Rule 150).

In this case, the first respondent has not issued any notice to the petitioner before rejecting NOC and, therefore, the same is unsustainable.

As seen from the relevant portion of the counter affidavit except making a bald allegation that the land in survey No.1969/1B was assigned in 1933 and that the same belongs to Government, no details are forthcoming . The respondents 1 and 2 have also not filed any document in support of the allegation except stating that the Sub-Collector, Madanapalle personally inspected the land and sent a report to that effect. The mere statement of Sub-Collector that it is a Government land would not be conclusive. The encumbrance certificate produced by the petitioner along with the writ affidavit and other revenue records if any would be crucial in deciding this question. However, as the respondent has not issued any notice to the petitioner or Territory Manager of the third respondent before rejecting NOC, it is the first respondent who has to decide the question in the first instance.

The writ petition, with the above observations, is disposed of. The impugned letter L.Dis.No.3979/2005 dated 26.10.2005 issued by the first respondent and signed by the second respondent is set aside and the matter is remitted to the first respondent to personally verify the documents that may be produced by the petitioner as well as Revenue records and decide the matter. This exercise may be completed within a period of four weeks from the date of receipt of a copy of this order. No costs.

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(**V.V.S.RAO,J**)

March 10, 2006

NOTE:

Dispatch order copy today.

(B/o)

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